

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MAURICE J.P. TABONE,

Plaintiff,

v.

HARTMANN US INC. and THE HAPPY
GROUP INC. d/b/a HAPPY EGG CO
USA,

Defendants.

Civil Action No. 4:23-cv-0986

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Maurice J.P. Tabone (“Mr. Tabone”), by and through his counsel, complains of Defendants, Hartmann U.S. Inc. (“Hartmann”) and The Happy Group Inc. d/b/a Happy Egg CO USA (“Happy Egg”) (Hartmann and Happy Egg are hereinafter collectively referred to as “Defendants”).

NATURE OF THE ACTION

1. This is an action arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Mr. Tabone, an individual, is a citizen of the Commonwealth of Australia and a resident of Moorebank, New South Wales, Australia. Since at least as early as 2007, Mr. Tabone, the inventor of the patents-in-suit, has dedicated significant time and resources to researching and developing innovative packaging containers and, in particular, containers for packaging products that hold, for example, fresh food or produce.

3. Hartmann is a corporation organized under the laws of the State of Missouri with a place of business at 3701 Hy Point Boulevard, Rolla, Missouri 65401. Hartmann is in the business of, among other things, producing and selling egg containers. Hartmann advertises its egg cartons online and elsewhere. (*See, e.g.*, <https://www.hartmann-packaging.com/north-america/>.)

4. Happy Egg is a corporation organized under the laws of the State of Delaware with a place of business at 701 South Horsebarn Road, Suite 200, Rogers, Arkansas 72758. Happy Egg is in the business of, among other things, producing and selling eggs in containers provided by Hartmann. Happy Egg advertises its eggs and egg cartons online and elsewhere. (*See, e.g.*, <https://happyegg.com>.)

JURISDICTION AND VENUE

5. This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Hartmann because Hartmann resides in this judicial district and has, as discussed in greater detail below, committed acts of patent infringement in this judicial district.

7. Hartmann is a Missouri corporation, has registered with the State of Missouri as a domestic corporation operating in the State of Missouri, and has maintained a registered agent for service of process in this judicial district. Hartmann has a regular and established place of business in this judicial district at its 350,000 square foot manufacturing facility in Rolla, Missouri.

8. This Court has personal jurisdiction over Happy Egg, a Delaware corporation with its corporate headquarters located in Rogers, Arkansas (less than twelve miles from the Arkansas-Missouri border). Indeed, Happy Egg has extensive contacts with the state of Missouri and states on its website that “Happy Egg Co. USA cemented its roots in Arkansas and Missouri (and now

Indiana) where [Happy Egg's] 60+ small family farms produce exceptional-tasting eggs.” (*See* <https://happyegg.com/faqs/>; *see also id.* (stating, under “Where are Happy Egg Hens Raised?,” that “Happy Egg farms are located primarily in the Ozark woodlands of Arkansas and Missouri”), *id.* (stating, under “Who Runs the Farms that Produce Happy Eggs?,” that “[u]nlike typical commercial farms, the farms that produce Happy Eggs don’t produce eggs for other companies; so, each of [Happy Egg’s] farms goes above and beyond to exceed all free-range certification standards, and [Happy Egg] ha[s] third parties who audit each farm to ensure that [Happy Egg is] always upholding the highest animal-humane standards”), *id.* (stating, under “How Do[es] [Happy Egg] Ensure the Farms are Working to [Its] Standards?,” that Happy Egg “only work[s] with small family farms to make sure [Happy Egg’s] hens receive close, daily care and attention. . . . [Happy Egg] inspect[s] each farm on a regular basis and conduct[s] monthly farm checks and unannounced audits. In the rare case there’s an issue, [Happy Egg] work[s] with the farmer involved to make sure it’s fixed. If ever [Happy Egg’s] standards aren’t met, the farmer is released from [Happy Egg’s] program. At the end of the day (and the start, and everything in between), the safety, health and proper raising of [Happy Egg’s] hens and eggs is [Happy Egg’s] highest priority”), *id.* (stating, under “How Often Does Happy Egg Co. Inspect Each of Its Farms?,” that Happy Egg “tr[ies] to visit [its] outstanding farms as much as possible, not only to ensure they are continuing to uphold our Happy Egg standards, but to say hello to [Happy Egg’s] girls, too! [Happy Egg] love[s] sending [its] employees to [its] farms when they can visit and see first-hand how awesome they are. [Happy Egg] also conduct[s] regular quality and compliance checks, and plan[s] unannounced audits each quarter”), *id.* (stating, under “How Many Farms are Used by Happy Egg?,” that Happy Egg has “over 100 beautiful family farms so far, each one carefully chosen and planned based on qualifications of the farmer, optimal locations, and environmental conditions”).) Notably, in an

August 5, 2020 post on Facebook.com, Happy Egg stated, “All Happy Egg farms are in the Ozark woodlands of Arkansas and Missouri as well as the beautiful ranges of Indiana.” (See <https://www.facebook.com/HappyEggCoUSA/photos/a.413692795361135/3231423673588019>.)

9. In a November 19, 2018 post on Facebook.com, Happy Egg stated, “Hen life on a small family operated Happy Egg free range farm in Missouri. Here’s what today and every day looks like!” (See <https://www.facebook.com/HappyEggCoUSA/videos/264155097616134>.)

10. Happy Egg has operated, and continues to operate, several farms in Missouri, including, for example, farms located at:

- 8822 South Oo Highway, Walker, Missouri 64790 (see, e.g., <https://www.facebook.com/HappyEggCoUSA/photos/a.413692795361135/1742103722520029/>) (Happy Egg identifying “The Koehns (T&L Poultry)” as “Happy Egg Farmers”));
- 806 North Madison Street, Raymore, Missouri 64083 (see, e.g., <https://www.facebook.com/HappyEggCoUSA/photos/a.413692795361135/1416057431791328/>) (Happy Egg stating, “All of [Happy Egg’s] free range eggs come from small, family farms like Green Grass Farm in Raymore, Missouri!”)); and
- 92 Kelly Road, Buffalo, Missouri 65622 (see, e.g., <https://www.facebook.com/HappyEggCoUSA/photos/a.413692795361135/1453362051394199/>) (Happy Egg stating, “Elmer & Bonnie from Circle K Farm in Buffalo, MO, love the sweet squawking sounds of their hens on pasture”)).

11. Happy Egg exerts significant control over its farms, including the Happy Egg farms located in Missouri. Happy Egg, for example, enters into long term contracts with its farmers and provides these farmers with detailed specifications on how to operate the farms. Dan Arnsperger, then Chief Executive Officer of Happy Egg, stated in a 2019 interview with “Farm to Table Talk” that:

Our model is about backing and supporting individual owner operators of farms. We’ll sign a very long term contract to buy those eggs [O]ver the past several decades we have refined what we think is a fantastic layout for the farmer and a fantastic program overall so in general we are going to provide that farmer with the specification on what needs to be built, they’re going to use a local team to get that built.

(See <https://farmtotabletalk.com/breakfast-is-happy-dan-ansperger-happy-egg/> (starting at 13:02).)

12. Happy Egg also specifically controls the details by which its farms, including the Happy Egg farms located in Missouri, produce Happy Egg's eggs. Happy Egg, for example, controls the play kits that are provided to the hens as well as the number of hens in a flock. Mr. Arnsperger stated in a 2019 interview with "Farm to Table Talk" that:

When you go out to one of our farms, which is exactly what if you've ever read a storybook about a farm and farm life is like, our farms are exactly what you picture. Beautiful rolling hills, grass, trees, and our birds are out on the farm pecking and it is, there's a real abundance of space. Interestingly, not just space, which is a big deal, but also tree coverage. You know, birds want to feel safe just like the rest of us do, so we have trees, we put play kits out on the yard and give them places to roam.

(See <https://farmtotabletalk.com/breakfast-is-happy-dan-ansperger-happy-egg/> (starting at 19:50).) Notably, Happy Egg states in an advertising video that it "set[s] flock size limits so birds can move freely inside the barn." (See <https://www.youtube.com/watch?v=GUN0742ygNA>.)

13. Happy Egg also exerts control over its farms, including the Happy Egg farms located in Missouri, by funding the farms. Mr. Arnsperger stated in a 2019 interview with "Farm to Table Talk" that "we're going to make sure that they [the contracted farms] have access to the capital they need." (See <https://farmtotabletalk.com/breakfast-is-happy-dan-ansperger-happy-egg/> (starting at 15:00).)

14. Further, Happy Egg enters into egg production agreements with its farms, including the Happy Egg farms located in Missouri, that have no prior experience in the egg business. Indeed, Mr. Arnsperger answered the following question in a 2019 interview with "Farm to Table Talk":

Q: Now I suppose, some of them [the contracted farms] have been convention producers before, would that be a safe assumption?

A: A lot of the producers that we have were in the turkey business, actually before or more likely their parents were in the turkey business before, so many of them in fact I'd say most of them are new to the egg business.

(See <https://farmtotabletalk.com/breakfast-is-happy-dan-ansperger-happy-egg/> (starting at 15:41).)

15. Still further, Happy Egg maintains interim control over its farms, including the Happy Egg farms located in Missouri, during the production of Happy Egg's eggs. Mr. Arnsperger stated in a 2019 interview with "Farm to Table Talk" that:

We want to make sure that we are doing unannounced audits, and we are checking our farms. But if you ask our farmer, they are going to tell you those audits don't turn into "gotcha" checklists, but more how do we get better, how do we continue to improve, how do we continue to create a viable business and a great situation for our birds.

(See <https://farmtotabletalk.com/breakfast-is-happy-dan-ansperger-happy-egg/> (starting at 30:24).)

16. Happy Egg sells eggs throughout this judicial district including at, for example:

- Dierbergs Market, 7233 Watson Road, Saint Louis, Missouri, 63119;
- Walmart, 1900 Maplewood Commons Drive, Saint Louis, Missouri, 63143;
- Dierbergs Market, 8450 Eager Road, Saint Louis, Missouri, 63144; and
- Fresh Thyme Farmers Market, 9920 Lin Ferry Drive, St. Louis, Missouri, 63123.

(See <https://happyegg.com/store-locator/>.)

17. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(d) and 1400(b). See, e.g., *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017); *In re Cray Inc.*, 871 F.3d 1355 (Fed. Cir. 2017).

PATENTS-IN-SUIT

18. On May 14, 2019, the United States Patent and Trademark Office (“USPTO”) duly and legally issued U.S. Patent No. 10,287,070 (“the ‘070 patent”) entitled “Container Base and Lid with Planar Area for Flat Application of Adhesive Membrane.” Mr. Tabone, named inventor of the ‘070 patent, owns and has standing to sue for infringement of the ‘070 patent. A copy of the ‘070 patent is attached as Exhibit A.

19. On January 18, 2022, the USPTO duly and legally issued U.S. Patent No. 11,225,365 (“the ‘365 patent”) entitled “Container Base and Lid with Planar Area for Flat Application of Adhesive Membrane.” Mr. Tabone, named inventor of the ‘365 patent, owns and has standing to sue for infringement of the ‘365 patent. A copy of the ‘365 patent is attached as Exhibit B.

MR. TABONE’S PRIOR CORRESPONDENCE WITH DEFENDANTS

20. On April 22, 2015, Mr. Tabone notified Brødrene Hartmann A/S, the parent company of Hartmann, of his worldwide patent applications claiming priority to Australian Patent No. AU2008215159 that further claims priority to Australian Patent Nos. AU2007902246 and AU2007900654. In his correspondence, Mr. Tabone stated:

Recently, while grocery shopping, I noticed 2 separate egg packages on shelf in a local Woolworths store. The two (2) noted packages were of similar design to each other, albeit labelled/branded and coloured differently and, they contained fresh egg products from two (2) separate, Australian based Companies (i.e. Ecoeggs and Wattle Ridge). The above-noted package design/s contained primary attributes of my invention as recited in AU2008215159. Through further research, I have discovered that Brodrene Hartmann A/S have an advertised product on their website <http://www.hartmann.dk/Egg%20Pack/imagic2.aspx> namely, “Imagic2”. . . Further to my above-noted, granted Australian Patent, I also have similar Patents and Applications in China, Hong Kong, Japan and US.

21. The '070 and '365 patents are similar to Australian Patent No. AU2008215159, and both the '070 and '365 patents claim priority to Australian Patent Application Nos. AU2007902246 and AU2007900654.

22. Mr. Tabone previously notified Happy Egg (and Hartmann UK Ltd) of the '070 patent and their infringement of the same. Specifically, in a notice letter dated September 12, 2019, Mr. Tabone notified Happy Egg's then Chief Executive Officer, Dan Arnsperger, of Happy Egg's infringement of the '070 patent and included a detailed claim chart describing the Accused Products' infringement of certain claims of the '070 patent on an element-by-element basis. In the letter, Mr. Tabone requested that Happy Egg promptly contact his counsel to discuss patent licensing options.

23. On November 7, 2019, Happy Egg's then counsel, Christopher J. Bischoff, provided Mr. Tabone's counsel the contact information for Ian Singleton, then the Managing Director of Hartmann UK Ltd. Soon thereafter, on November 19, 2019, Mr. Tabone's counsel emailed Mr. Singleton, notifying Mr. Singleton that the sale of the Accused Products infringes certain claims of the '070 patent and that Mr. Tabone has been in communication with Hartmann since at least as early as 2015 regarding his patented technology. In his November 19, 2019 correspondence to Mr. Singleton, Mr. Tabone's counsel also provided a copy of the detailed claim chart depicting the Accused Products' infringement of certain claims of the '070 patent and requested that Mr. Singleton provide a settlement proposal to Mr. Tabone as soon as possible. To date, neither Mr. Tabone nor his counsel has received any response to their November 19, 2019 correspondence.

24. Notwithstanding Happy Egg's (and Hartmann UK Ltd's) awareness of the '070 patent, Mr. Tabone's claim of infringement of the '070 patent by the Accused Products, and Mr.

Tabone's notice to Happy Egg (and Hartmann UK Ltd) of the need to take a license to the '070 patent for continued sales of the Accused Products, Happy Egg's (and Hartmann UK Ltd's) infringement has persisted, unabated, leaving Mr. Tabone no choice but to file this lawsuit after the USPTO recently issued the other patent-in-suit, the '365 patent, in January 2022. Accordingly, Happy Egg's (and Hartmann UK Ltd's) ongoing infringement of the '070 patent has been willful, deliberate, and objectively reckless.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 10,287,070

25. Mr. Tabone repeats and re-alleges the allegations in the preceding paragraphs as though fully set forth herein.

26. Defendants have infringed and continue to infringe the '070 patent by, at least, making, using, offering for sale, and/or selling throughout the United States, including within this judicial district, products including the imagic²® line of egg cartons, and other egg cartons with different names and/or model numbers but with the same or substantially the same designs, features, and functionalities as the aforementioned egg cartons (collectively, the “Accused Products”).

27. An example of the Accused Products is shown below.



<https://www.walmart.com/ip/Happy-Egg-Organic-Free-Range-Large-Brown-Eggs-12-Count/134714692>

28. By way of example, and without waiving any right to assert additional or modified infringement contentions, Mr. Tabone attaches hereto as Exhibit C a claim chart depicting one way in which the Accused Products infringe the '070 patent.

29. Specifically, Defendants have infringed and continue to infringe at least claims 1-3, 5, 8, 9, 11, and 16-25 of the '070 patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities including, without limitation, making, using, offering for sale, and/or selling the Accused Products in the United States. The Accused Products practice each and every element of at least claims 1-3, 5, 8, 9, 11, and 16-25 of the '070 patent both literally and under the doctrine of equivalents in contravention of 35 U.S.C. § 271.

30. Defendants' infringement has injured Mr. Tabone and Mr. Tabone is entitled to recover damages adequate to compensate him for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 284.

31. Mr. Tabone has complied with 35 U.S.C. § 287 to the extent required by law.

32. Happy Egg's foregoing infringing acts have been with full knowledge of Mr. Tabone's rights and interests in the '070 patent, thereby constituting willful patent infringement. Happy Egg, therefore, should be required to pay Mr. Tabone's attorney fees, expenses, and costs for its willful and blatant disregard of Mr. Tabone's rights in the '070 patent.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 11,225,365

33. Mr. Tabone repeats and re-alleges the allegations in the preceding paragraphs as though fully set forth herein.

34. Defendants have infringed and continue to infringe the '365 patent by, at least, making, using, offering for sale, and/or selling throughout the United States, including within this judicial district, the Accused Products.

35. By way of example, and without waiving any right to assert additional or modified infringement contentions, Mr. Tabone attaches hereto as Exhibit D a claim chart depicting one way in which the Accused Products infringe the '365 patent.

36. Specifically, Defendants have infringed and continue to infringe at least claims 1-23 and 28-30 of the '365 patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities including, without limitation, making, using, offering for sale, and/or selling the Accused Products in the United States. The Accused Products practice each and every element of at least claims 1-23 and 28-30 of the '365 patent both literally and under the doctrine of equivalents in contravention of 35 U.S.C. § 271.

37. Defendants' infringement has injured Mr. Tabone and Mr. Tabone is entitled to recover damages adequate to compensate him for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 284.

38. Mr. Tabone has complied with 35 U.S.C. § 287 to the extent required by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Mr. Tabone, respectfully asks this Court to enter judgment against Defendants, Hartmann and Happy Egg, and against their subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with Hartmann and Happy Egg, granting the following relief:

- A. The entry of judgment in favor of Mr. Tabone and against Defendants;
- B. A finding that Defendants have directly infringed the '070 and '365 patents;
- C. A finding that Happy Egg has willfully and deliberately infringed Mr. Tabone's rights in the '070 patent;
- D. An award of damages adequate to compensate Mr. Tabone for the infringement that has occurred, and in no event less than a reasonable royalty as permitted

by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began and post-judgment interest;

E. An award of costs and expenses;

F. Increased damages as permitted under 35 U.S.C. § 284;

G. A finding that this case is exceptional and an award to Mr. Tabone of his reasonable attorney fees and costs as provided by 35 U.S.C. § 285; and,

H. Such other relief that Mr. Tabone is entitled to under law, and any other and further relief that this Court or a jury may deem just and proper.

Jury Demand

Mr. Tabone demands a trial by jury on all issues presented in this Complaint.

Respectfully submitted,

Dated: August 8, 2023

/s/ Raymond P. Niro, Jr.

Raymond P. Niro, Jr.

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